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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9801-HII(2)-2021/12745.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 1/2018 dated 15.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

GURJIT SINGH - EX-DRIVER NO.1, CHANDIGARH TRANSPORT UNDERTAKING, CHANDIGARH, R/O VILLAGE BOOTHGARH, P.O. SIALWAMAJRI, TEHSIL KHARAR, DISTRICT MOHALI. (Workman)

AND

1. SECRETARY TRANSPORT, CHANDIGARH ADMINISTRATION, UNION TERRITORY CHANDIGARH.
2. DIVISIONAL MANAGER, CTU & DIRECTOR TRANSPORT, UNION TERRITORY CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that he was appointed on the post of Bus Driver in Chandigarh Transport Undertaking and he joined his services on 09.10.1998. An FIR No.145 dated 13.09.2009 was registered against him under Section 18/25/61/85 of NDPS Act, 1985. The workman was convicted and sentenced to undergo RI for a period of five years with fine of ₹ 20,000/- and in default of payment of fine further imprisonment for a period of six months vide judgment of conviction and order of sentence dated 31.03.2014 passed by the learned Court of Shri Pushvinder Singh, Judge Special Court, Patiala and in pursuance of judgment the workman was taken into the custody and committed to imprisonment in jail. He preferred a criminal appeal No.1631 of 2014 against the judgment of conviction dated 31.03.2014 before the Hon'ble Punjab & Haryana High Court. He also filed a criminal Miscellaneous No. 21111 of 2014 whereby sentenced *qua* his imprisonment and fine was suspended during the pendency of his appeal and he was released

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on bail subject to the satisfaction of the Chief Judicial Magistrate, Patiala *vide* order dated 05.12.2014 passed by the Hon'ble High Court. On release from jail, the workman submitted his joining report for duty on 09.04.2015 explaining all his position in this regard. He was issued charge sheet *vide* Memo No.2304/EAD/CTU-III/2010, dated 20.07.2010 which was duly replied by him *vide* his reply dated 17.08.2020 *qua* absent from duty only and not for conviction. A regular departmental inquiry was ordered against him. The workman could not attend his departmental inquiry due to non-payment of subsistence allowance and disturbed family circumstances because of his long and costly litigation. He was issued show cause notice *vide* Memo No.5700/ECD/G-I/CTU/2015, dated 26.10.2015 to which he filed reply. The services of the workman have been dismissed *vide* office order No.1485/ECD/G-1/CTU/2016 dated 14.06.2016. He preferred an appeal before the Secretary Transport, Chandigarh Administration which was accepted and punishment order was set aside *vide* Endst. No.11/16-CTU-(R&J)/2017/2942, dated 24.04.2017 with the direction to consider his case in the light of serious contentions raised in reply to show cause notice. In compliance of the order of the appellate authority, the workman was called for personal hearing. He also submitted written personal hearing raising serious contentions in addition to his reply to the show cause notice. *Vide* order bearing Endst. No.14258/ECD/G-I/CTU/2017, dated 06.09.2017 dismissal order No.1485/ECD/G-1/CTU/2016, dated 14.06.2016 ordered unreviewable. The same illegal, arbitrary, discriminatory, unreasonable, without application of mind, violative of statutory provisions, against the principles of natural justice and fair play and not inconsonance with established law on the ground that impugned order has become infructuous as the appellate authority had already set aside the impugned order. Impugned order itself speaks that convicted employees whose appeals are pending in their respective appellate courts are still in service and no punishment is awarded to them. Impugned order has retrospective effect i.e. order of dismissal passed on 06.09.2017 and implementable with effect from 14.06.2016 which is not in accordance with the Punjab Government instructions dated 23rd June, 1997. The workman was not paid any subsistence allowance during the period of his deemed suspension under Rule 4(2)(b) of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 with effect from 31.03.2014 to 14.06.2016 and 15.06.2016 to 06.09.2017. He had not committed any misconduct under Conduct Rules and alleged offence consequent upon, he was convicted is not related to his work & employment. He was on leave on the day of alleged commission of offence i.e. 13.09.2009. Impugned order is solely based upon conviction of the workman but circumstances & conduct which lead to his conviction was not considered. The reason given in the impugned order is that only sentence and fine has been stayed by the Hon'ble Court and not the conviction is wrong. Show cause notice dated 26.10.2015 issued upon conviction of the workman dated 31.03.2015 proposing a pre-determined penalty of dismissal from service is defective and illegal. The workman was asked to send his reply to the show cause notice through the Superintendent Jail, which itself makes the entire proceedings against him unjustified and unsustainable in the eyes of law. Impugned order is also not in accordance with Punjab Government instructions dated 05.10.2016. Ultimately, it is prayed that the impugned order No.1485/ECD/G-1/CTU/2016, dated 14.06.2016 and order bearing Endst. No.14258/ECD/G-I/CTU/2017, dated 06.09.2017 be set aside and the workman be granted all the service benefits.

3. The management contested the case of the workman and filed written statement that an FIR No.145 dated 13.09.2009 under Section 18/25/61/85 of NDPS Act, 1985 was registered against the workman whereby he was found in possession of 2.5 Kgs. of opium by the police party and he was taken into custody on 13.09.2009 and remained there till 27.01.2010. The trial was conducted and on conclusion of the trial of the workman was convicted and sentenced to undergo RI for a period of 5 years with fine of ₹ 20,000/- and in default of payment of fine further imprisonment for a period of six months *vide* judgment of conviction and order of sentence dated 31.03.2014 passed by the Court of Shri Pushvinder Singh, Judge Special Court, Patiala and he was taken into custody on 31.03.2014. The workman filed a criminal appeal No.1631 of 2014 against the judgment of conviction dated 31.03.2014 before the Hon'ble Punjab & Haryana High Court wherein he had filed a Criminal Miscellaneous No.21111 of 2014 whereby sentence *qua* imprisonment of the official was suspended during the pendency of the appeal and he was released on bail subject to satisfaction of Chief Judicial Magistrate, Patiala *vide* order dated 05.12.2014 passed by the Hon'ble High Court. The workman

had submitted an application for grant of leave due to illness but his leave was rejected and he was informed accordingly *vide* Memo No.3159/EAD/CTU-III/2009, dated 17.09.2009 that he is being treated absent from duty with effect from 01.08.2009 onwards and was directed to appeal before PMO, GMSH, Sector 16, Chandigarh for his medical examination but he did not respond anything because he was in custody. He had also failed to intimate the office with regard to his criminal trial and his custody as well. Being a Government it was incumbent upon him to intimate his office with regard to registering an FIR, custody and criminal trial against him. *Vide* Memo No.2304/EAD/CTU-III/2010, dated 29.04.2010 the workman was also asked to submit his reply to the charge sheet, which was replied by him *vide* his reply dated 17.08.2010 wherein he admitted the factum of criminal case against him. His reply was considered by the competent authority and the same was not found satisfactory. A departmental inquiry was ordered to be conducted against the workman wherein he did not appear and the same was processed *ex parte* against the workman and the charges stood proved against the workman *vide* findings of the Inquiry Officer dated 21.05.2014. A show cause notice No.5700/ECD/G-I/CTU/2015 dated 26.10.2015 was served upon the workman, which was replied by him. On merits, it is pleaded that the workman was quite aware about his departmental proceedings and he used to appear in the departmental inquiry to defend his case. Evidence of the prosecution was recorded in his presence and he was also given an opportunity to cross-examine the prosecution witnesses but when the inquiry was fixed for the defence statement then the workman intentionally disappeared from the inquiry proceedings so *ex parte* order was passed by the Inquiry officer. The workman did not attend the departmental inquiry intentionally to avoid the same and to adopt the delay tactics. The workman in reply to show cause notice has not explained his position at all and no serious contention was raised by him rather the factum of his conviction is admitted by him. The workman had preferred an appeal against order of dismissal dated 14.06.2016 before the appellate authority and the matter was remanded back to the Director Transport to reconsider the matter in the light of contentions raised by the appellant-workman after affording sufficient opportunities to the workman. The matter was remanded back due to the reason that punishment order was passed not in the presence of the workman. In compliance of order dated 24.04.2017 passed by the Learned Appellate Authority, the workman was called for personal hearing wherein he submitted that some employees, who are convicted and their sentence has been suspended by the appellate court are working in the CTU. The contention raised by the workman was duly considered by the punishing authority and all the record was checked whereby it was found that in some cases, the employees had been acquitted therefore their cases had been filed and they were taken back in service and in rest of the cases, show cause notice has been issued for taking appropriate action against the officials who are convicted and still working in the department. The workman was found guilty on account of recovery of opium weighing 2.5 kgs. by the police, which is not only a heinous crime against the society but comes under the ambit of moral turpitude. Act & conduct of the workman is not desirable to retain into service. Order of dismissal of the workman is well reasoned and speaking order and the same has been passed after adopting due procedure of law and exercising the powers under Article 311(2) of the Constitution of India. Impugned order dated 14.06.2016 and 06.09.2017 are well reasoned and speaking order. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No.1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that impugned order bearing endorsement No.14258/ECD/G-I/CTU/2017 dated 06.09.2017 whereby his dismissal order No.1485/ECD/G-I/CTU/2016 dated 14.06.2016 ordered unreviewable, is enforceable, illegal, arbitrary, discriminatory, unreasonable, without application of mind, violative of statutory provisions against the principles of natural justice and fair play and not in consonance with established law. The Secretary Transport, Chandigarh Administration accepted his appeal and has already set aside the punishment order dated 14.06.2016 with the direction to consider his case in the light of serious contentions raised in reply to show cause notice. Impugned order has become in fructuous as the appellate authority had already set aside impugned order. He further deposed that FIR No.145 dated 13.09.2009 was registered against him under Section 18/25/61/85 of NDPS Act, 1985 and he was convicted and sentenced to undergo imprisonment for five years with fine of ₹ 20,000/- vide order of sentence dated 31.03.2014. He preferred a criminal appeal against conviction before the Hon'ble Punjab & Haryana High Court and also filed criminal miscellaneous in which his imprisonment and fine was suspended and he was released on bail. Thereafter he submitted joining report on 09.04.2015. He also deposed that almost all the employees of Chandigarh Transport Undertaking, Chandigarh, who have been convicted by the criminal courts and whose appeals are pending are kept in service. Even after their finality of their conviction, some employees were given all the service benefits. He further deposed that he had not committed any misconduct under the Conduct rules. The alleged offence, consequent upon, which he was convicted did not relates with his work & employment. He was not paid any subsistence allowance during the period of his deemed suspension. He was also not allowed his accrued benefits of completed service i.e. leave encashment, payment of GIS and gratuity etc. He further deposed that impugned order has the retrospective effect i.e. order of his dismissal passed on 06.09.2017 and implementable with effect from 14.06.2016 which is not in accordance with the Punjab Government instructions dated 23.06.1977.

8. Learned representative for the workman has argued that the workman was appointed on the post of Bus Driver in Chandigarh Transport Undertaking and he joined the services on 09.10.1998. An FIR No.145 dated 13.09.2009 was registered against him under Section 18/25/61/85 of NDPS Act, 1985 and he was convicted and sentenced to undergo imprisonment of five years with fine of ₹ 20,000/-. Then he preferred the appeal against the sentence of conviction and his sentence was suspended during the pendency of his appeal and he was released on bail on 05.12.2014. He further argued that he was issued charge sheet and departmental inquiry was initiated against him thereafter he was issued show cause notice and dismissed from service vide impugned order dated 14.06.2016 Exhibit 'AW-A-2' which is illegal, arbitrary and discriminatory. He further argued that aggrieved by order dated 14.06.2016 he preferred the appeal and his case was remanded back to the Director Transport to reconsider the matter then impugned order dated 06.09.2017 was passed which was also without jurisdiction as the disciplinary authority has no authority to review its own order. No misconduct has been committed by the workman as per Government Employees Conduct Rules, 1966. The impugned order has retrospective effect i.e. order dismissal from service was passed on 06.09.2017 and implementable with effect from 14.06.2016. Further there is wrong perception in the mind of the department that convicted Government employee cannot be retained in service. Hence, the impugned order is discriminatory and not in consonance with law laid down by the Hon'ble Punjab & Haryana High Court. He has also not been paid subsistence allowance during the period of suspension. He has placed reliance on citations titled as **Krishnankutty Versus Senior Superintendent of Post Office, Ernakulam, O.P. No.2448 decided on 23.06.1975; State of Haryana Versus Ved Kaur, Civil Appeal No.6866 of 2017 decided on 03.05.2017; Sudagar Singh Versus State of Punjab & Others, 2014(2) ILR 287 (P&H) and Dhir Chand Versus State of Haryana & Others, CWP No.27383 of 2013 decided on 19.11.2018.** So it is further argued and prayed that impugned order dated 14.06.2016 and 06.09.2017 be set aside.

9. On the other hand, learned Law Officer for the management has examined Smt. Jyoti Sareen - Senior Assistant as MW1, who deposed that the workman was appointed on the post of Bus Driver and he joined the management on 09.10.1998. An FIR No.145 under Section 18/25/61/85 of NDPS Act, 1985 dated 13.09.2009 was registered against the workman whereby he was found in possession of 2.5 Kgs of opium by the police party. The workman was taken into custody on 13.09.2009 and remained there till 27.01.2010 as per certificate dated 12.06.2015 issued by the Jail Superintendent, Patiala. The trial was conducted and the workman was convicted and sentenced to undergo RI for a period of 5 years with fine of ₹ 20,000/- *vide* judgment dated 31.03.2014. The workman had filed a criminal appeal against the judgment of conviction wherein he had filed a criminal miscellaneous No.21111 of 2014 whereby sentence *qua* imprisonment was suspended during the pendency of appeal and he was released on bail. She further deposed that the workman had submitted an application for grant of leave due to illness but his leave was rejected and he was informed accordingly *vide* memo dated 17.09.2009 that he is being treated absent from duty with effect from 01.08.2009 onwards and was directed to appear before P.M.O., G.M.S.H., Sector 16, Chandigarh for his medical examination but he did not respond anything because he was in custody. The workman had also failed to intimate the office with regard to his criminal trial and his custody as well. *Vide* Memo No.2304/EAD/CTU-III/2010, dated 29.04.2010 the workman was asked to submit his reply to the charge sheet, which was replied by him *vide* his reply dated 17.08.2010 wherein he had admitted the factum of criminal case against him. His reply was considered by the competent authority and was not found satisfactory. A departmental inquiry was initiated against him but he did not appear in the inquiry proceedings and was proceeded against *ex parte*. The charges stood proved against him *vide* findings of the Inquiry Officer dated 21.05.2014. Thereafter a show cause notice dated 26.10.2015 was served upon the workman to explain his position as to why he should not be dismissed from service in view of the conviction awarded by the Court of Shri Pushvinder Singh - Judge Special Court, Patiala *vide* judgment dated 31.03.2014. The workman submitted his reply wherein he admitted that an FIR No.145 dated 13.09.2009 was registered against him and he was granted bail on 22.01.2010 and factum of judgment of conviction and order of sentence. The appeal filed by him stands admitted and recovery of fine and order of sentence was suspended but conviction order is yet not set aside. The workman remained absent from duty and in this connection he was charge sheeted.

10. Learned Law Officer for the management has argued that the workman was appointed on the post of Bus Driver and FIR has been registered against him NDPS Act and he was convicted for five years imprisonment and thereafter during the pendency of the appeal his sentence was suspended. A charge sheet was issued, which was duly replied by the workman and the same was not found satisfactory and departmental inquiry was duly conducted and he has been dismissed from service after following due process. The conduct of the workman is not only a social crime but comes under the ambit of moral turpitude. So termination is not illegally and order dated 06.09.2017 have no retrospective effect as the workman has already been dismissed from service on 14.06.2016. He referred to the provisions of Article 311 of the Constitution and prayed for dismissal of the present industrial dispute.

11. After considering the rival contentions of both the sides, I find that admittedly the workman was appointed on the post of Bus Driver in Chandigarh Transport Undertaking. It is also admitted that an FIR under Section 18/25/61/85 of NDPS Act, 1985 dated 13.09.2009 was registered wherein he was found in possession of 2.5 Kgs. opium and he was taken into custody on 13.09.2009 and he remained there till 27.01.2010 as per certificate issued by the Jail authorities on 12.06.2015. Admittedly, the workman filed criminal appeal against the judgment of conviction dated 31.03.2014 before the Hon'ble Punjab & Haryana High Court in which his sentence was suspended. He was released on bail. Thereafter as per averments of the workman he submitted his joining report on 09.04.2015. As per documentary evidence the workman was charge sheeted on 20.07.2010 and he had himself replied on 17.08.2010 *qua* absence from duty only and not for conviction. Thereafter the departmental inquiry was initiated and further show cause notice issued on 26.10.2015. Thereafter his services

has been dismissed on 14.06.2016 *vide* order dated 14.06.2016. Further the workman preferred the appeal before Secretary Transport, Chandigarh Administration and order dated 14.06.2016 was set aside and matter was remanded by the appellate authority then again the Director Transport, Union Territory Chandigarh passed the order bearing endorsement dated 06.09.2017, which reads as under :—

"Considering all facts of the case, the undersigned is of the view that the order No.1485/ECD/G-1/CTU/2016 dated 14.6.16 is legal just and sustainable in the eyes of law and therefore does not require any review at this stage."

Hence, the order bearing endorsement dated 06.09.2017 was passed in compliance with observation made by the appellate authority *vide* order dated 08.02.2017 bearing endorsement dated 24.04.2017. The workman challenged both the orders and argued that the impugned orders are solely based upon his conviction and circumstances & conduct which lead to conviction has not been considered and this impugned order is non-speaking. No reasonable reply of his contentions has been considered by the department.

12. Before proceeding further let us peruse Article 311(2) of the Constitution, which states that **no person, who is a member of the civil service of the Union or All India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed, removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.** Clause (a) of the second proviso to Article 311(2) provides that **once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant is acquitted on appeal or other proceedings, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. To wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person, who has been convicted of a serious offence by a criminal court.** Meaning thereby it would mean that the workman is taken in service but has already been convicted in various charge. Reliance is also placed on **Shankardass Versus Union of India, 1985(2) SCR 358** in which Hon'ble Supreme Court of India has held that :—

"Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the government the power to dismiss a person from services "on the ground of misconduct which has led to his conviction on a criminal charge." But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

Further Clause (a) second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which had allowed to his conviction on a criminal charge.

13. In the present case in hand admittedly the workman was convicted and the workman has already been dismissed from service on the conduct which has led to his conviction of criminal charges for keeping 2.490 Kgs. which is not only a heinous crime against the society but comes under the ambit of moral turpitude. Moreover, the order dated 06.09.2017 is also reconsideration of case whereas the dismissal has already been awarded on 14.06.2016 was confirmed and the workman has already remained in jail for about eleven months. Hence, the departmental proceedings has been initiated against the workman rightly and he has been given full opportunities of hearing and the fact is admitted by AW1 during his cross-examination regarding his conviction

and regarding absence departmental inquiry against him in a case of absence from duty. On the other hand, learned Law Officer examined Smt. Jyoti Sareen - Senior Assistant, who had duly proved the case of the management. So the cases relied upon by the workman are not directly applicable and distinguishable to the facts of the present case.

14. In the light of discussion made above, the workman has failed to prove that his services were terminated illegally by the management. Accordingly, this issue is decided against the workman and in favour of the management.

Relief :

15. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 15th September, 2021.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9811-HII(2)-2021/12747.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 15/2020, dated 04.10.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

TRILOK SINGH S/O SHRI PARSHOTAM SINGH, R/O HOUSE NO.2238/9, GALI NO.9, SHANTI NAGAR, MANIMAJRA, CHANDIGARH. (Workman)

AND

EMERGING INDIA HOUSING CORPORATION (P) LIMITED, SCO NO.46-47, FIRST FLOOR, SECTOR 9-D, NEAR MATKA CHOWK, MADHYA MARG, CHANDIGARH THROUGH ITS MANAGING DIRECTOR, R/O HOUSE NO.317, SECTOR 21-A, CHANDIGARH. 2ND ADDRESS : EMERGING INDIA HOUSING CORPORATION (P) LIMITED, SECTOR 115, SANTE MAJRA, KHARAR, PUNJAB (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that he was appointed as Typist-Legal/Operation in the management *vide* letter dated 01.05.2018 and his last drawn wages were ₹ 20,000/- per month. The workman had continuously and without any interruption performed his duties and the management was fully satisfied with his work & conduct. He was given the salary of ₹ 16,000/- in the month of May, 2018 instead of ₹ 20,000/-. He was even sent in the court cases by the management for para legal work though it was not the part of his duty. When in the month of August, 2018 the workman objected and refused to attend any court proceedings on behalf of the management, the management illegally terminated his services without issuing any charge sheet,

show cause notice or holding any inquiry and without afforded any opportunity of personal hearing in violation of provisions of Section 25-F of the ID Act. Termination of the workman from service is illegal, arbitrary and capricious being not in accordance with the provisions of the ID Act and principles of natural justice. At the time of terminating the services of the workman, neither the post held by him is abolished nor the work of the said post was receded nor any such or similar situation has been arisen. Action of terminating the services of the workman is an illegal action and unfair labour practice under Section 25-T of the ID Act. The management has engaged fresh hands without giving any intimation or any preferential treatment to him required under Section 25-H of the ID Act. The workman had not given the salary for the month of June 2018, July 2018 and ₹ 4,000/- remaining salary for the month of May, 2018, totaling ₹ 44,000/-. He is not gainfully employed. Ultimately, it is prayed that the workman be reinstated with continuity of service, full back wages and other consequential benefits.

3. During the pendency of the present industrial dispute, the workman made the following statement:-

"Since the firm of the management has been closed and the owner of the management has gone to out of country so I do not pursue my present industrial dispute. The same may be disposed off accordingly."

In view of the statement of the workman, the present industrial dispute is disposed off being not pressed. Appropriate Government be informed. File be consigned to the record room.

The 4th October, 2021.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9802-HII(2)-2021/12749.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 127/2016, dated 20.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

RAJINDER KUMAR RANA S/O SHRI RAM PARKASH, R/O VPO JAGHON, TEHSIL NALAGARH, DISTRICT SOLAN, HIMACHAL PRADESH (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH.
2. DIRECTOR TRANSPORT, UNION TERRITORY, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

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2. Case of the workman in brief is that the Chandigarh Transport Undertaking (*hereinafter called 'CTU'*), which is a public undertaking owned and run by the Union Territory Administration, Chandigarh, there was an acute shortage of Drivers and as a result thereof, the Drivers had to perform double duty and were being paid overtime. To cope with shortage of Driver, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003, whereby 45 vacancies of Drivers were advertised on contract basis. The workman being fully eligible applied for the post of bus Driver, his name was recommended by the Employment Exchange. He was called for Dug Test and Road Test and was called for interview in May 2004. The workman being successful, was selected and appointed as Driver *vide* appointment letter dated 28.06.2004. Thereafter the workman was subjected to medical test and he was also imparted traffic education on 28.06.2004. The appointment of the workman was made after following the due procedure of law and by considering other candidates, who had applied in pursuance to the advertisement, recommended by the Employment Exchange. Terms of contract of the workman was extended from time to time. Last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. The workman had performed his duties to the entire satisfaction of his superiors and there is nothing adverse against him and he was deputed on local / long route bus. The workman had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointment of Bus Drivers in SC / OBC category have been made so the contract of the workman stand terminated. As on date also various posts of Drivers are lying vacant so his services cannot be terminated. The workman was also not paid retrenchment compensation and neither any notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and had not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with the provisions of Section 25-G & 25-H of the ID Act as many fresh persons as Drivers were appointed without offering the same post to the workman being retrenched employee. Action of the management is illegal & violative of Article 14 & 16 of the Constitution of India. The workman had become now overage to seek employment elsewhere. He is the only bread earner in his family and with his illegal termination his family has been ruined. The management has also not paid gratuity to the workman on his illegal termination. The claim of the workman is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh, whereby the claim of similarly situated employees have been accepted and the said award has also been implemented by the management. Termination of the workman is also not justified as work is available with the management and after termination of his service the contractual staff has been engaged in violation of settled law that the contractual employees cannot be replaced by another contractual employee and when the work is of permanent nature. Ultimately, it is prayed that the workman be reinstated into service along with continuity of service and back wages along with interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim of the workman is highly belated as his services were dispensed with *vide* office order dated 27.04.2006 and the present claim has been filed in the year 2016 i.e. after 10 years of cause of action. On merits, it is pleaded that there was no issue of shortage of Drivers and over time as well with the management. Advertisement with regard to recruitment of 45 Drivers on the contract basis was made *vide* notice dated 11.10.2003. An order of appointment *vide* office order No.196/ECD/CTU/HOD/2004, dated 28.06.2004 was issued for appointment of the workman on the basis of recommendations in the interview held on 18.05.2004 for enrollment / engagement on contract basis for the post of Bus Driver. It was contemplated in the appointment order of the workman that he was engaged purely on the contract basis for a period of 89 days or till the regular incumbents, whichever is earlier. Further it was made clear that his services shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to him on account of discontinuation of his contractual services. Terms of the contract were extended from time to time. The workman had performed his services under the stop gap arrangement. The services of the

workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment order, the services of the contractual Drivers can be dispensed with at any time without assigning any reason or without giving any notice. Services of the workman have been dispensed with, as per the terms & conditions of the contract and the workman is not entitled to get any type of relief from this Court. The award dated 27.02.2013 passed by this Court is not applicable in this case. The management had also recruited Drivers on contract basis in the year 1999 apart from the batch of the workman on the same terms & conditions and their services were dispensed with according to the terms & conditions of the contract but they approached before the Hon'ble Central Administrative Tribunal (CAT) by filing original applications through OANo.1159/CH/2004 which was disposed of *vide* order dated 24.05.2006 with the directions to the management to continue the services of the contractual Drivers against the vacant post till the regular incumbents are appointed. Some of the contractual Drivers approached this Court by different references and one of the references was disposed of *vide* award dated 27.02.2013 whereby the workmen were ordered to be reinstated with 50% back wages only against the vacant post on regular basis. But at the time of termination of the contract of the workman no vacant post was available with the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by delay & laches ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No.1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that the CTU is a public undertaking owned and run by the Union Territory Administration, Chandigarh. There was an acute shortage of Drivers so the Drivers had to perform double duty and were being paid overtime and to cope with the same, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003 whereby 45 vacancies of Drivers were advertised on contract basis. He being fully eligible applied for the post of Bus Driver and his name was recommended by the Employment Exchange. He was called for dug test and road test and called for interview in May 2004. He was selected & appointed as Driver *vide* appointment letter dated 28.06.2004, subject to medical test. He was also imparted traffic education on 28.06.2004. He further deposed that his appointment was made after following due procedure of law. Terms of contract was extended from time to time and last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. His identity card was extended upto 07.07.2008. He had performed his duties to the entire satisfaction of his superiors. He further deposed that he had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointments of Bus Driver in SC / OBC category have been made so his contract stand terminated. As on date various posts of Drivers are lying vacant so his services cannot be terminated. He was also not paid retrenchment compensation and no notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and not sought mandatory permission from the appropriate authority before terminating his services.

The management has also complied with the provisions of Section 25-G & 25-H of the ID Act as fresh Drivers were appointed without offering the same post to him being retrenched. Action of the management is illegal & violative of Article 14 & 16 Constitution of India. He further deposed that his claim is squarely covered by the award dated 27.02.2013 published vide notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013.

8. Learned representative for the workman has argued that as per the advertisement in 'Punjab Tribune' newspaper the workman applied for the post of Driver and recommended by the Employment Exchange thereafter in May 2004 a road test was conducted and he was called for interview in May 2004 and being successfully he was appointed on 28.06.2004 and his medical tested was conducted and imparted traffic deduction on 28.06.2004. He further argued that on 27.04.2006 the workman performed his duties and in the evening of 27.04.2006 his services have been terminated by stating that since the regular appointment of the Bus Driver in SC / OBC category have been made therefore contract of the workman stands terminated. The services of the workman cannot be terminated as various posts are lying vacant the workman has also not been paid retrenchment compensation. No notice for retrenchment compensation was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act. The management has also not complied with the provisions of Section 25-G & 25-H of the ID Act. The case of the workman is clearly covered by the award dated 27.02.2013 published vide notification No.13/1/8640-HII(2)/2013/9958, dated 29.05.2013 passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh. Hence, the termination of the workman is illegal. He prayed for deciding this issue in favour of the workman.

9. On the other hand, learned Law Officer for the management has examined Smt. Jyoti Sareen - Senior Assistant as MW1, who deposed that the workman was appointed by the management purely on the contract basis vide appointment order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. The services of the workman were hired purely on temporary basis for specific period or till the regular incumbents join the department. Terms & conditions of the appointment order were adduced in writing which were duly accepted by the workman. As per appointment order, the contractual appointment will not confer any right for regular appointment with the management and the services of the workman can be dispensed with at any time without assigning any reason or without giving any notice. She further deposed that terms of the contract were extended from time to time and the workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with vide office order dated 27.04.2006. As per Clause 5 of the appointment, the services of the contractual Drivers can be dispensed with any time without assigning any reason or without giving any notice. She further deposed that the award dated 27.02.2013 passed by this Court is not applicable in the present case as at the time of termination of the contract of the workman, no vacant post was available with the management.

10. Learned Law Officer for the management has argued that the workman has been appointed on the contract basis and he was not terminated rather his services were dispensed with, on appointment of Bus Drivers on regular basis, as per terms & conditions of the appointment letter. Hence, the workman is not entitled for any retrenchment compensation and he prayed for deciding this issue against the workman and in favour of the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management purely on contract basis vide order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. It is also not disputed the terms of the workman was extended from time to time. The main grudge of the workman is that he has been terminated without any notice and he has not been given any retrenchment compensation and he is totally relying upon the award dated 27.02.2013 published vide notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh.

12. The workman has duly proved on record Exhibit 'AW1' which is bio-data of the workman, Exhibit 'AW2' medical examination of the workman, Exhibit 'AW3' order of appointment dated 28.06.2004 i.e. through which the workman was engaged as Bus Driver on contractual basis for a period of 89 days or till the

regular appointment of the candidate belong to the SC / OBC as Bus Driver whichever is earlier, Exhibit 'AW4' letter with regard to information regarding traffic education to CTU Bus Driver, Exhibit 'AW5' copy of 'Punjab Tribune' newspaper edition through which the advertisement regarding appointment of 45 Drivers on contract basis was advertised, Exhibit 'AW6' copy of identity card of the workman, Exhibit 'AW7' copy Chandigarh Administration Gazette dated 29.05.2013.

13. The workman himself is stating that he has been dispensed / terminated from service on 27.04.2006 whereas he has joined on 07.04.2006 as per order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006 and he has relied upon identity card which has been extended on 07.07.2008. Firstly, the workman failed to prove and produce on record in order No. 4394/ECD/HOD/CTU/2006, dated 07.04.2006 through which the service / contract of the workman was extended for further 89 days and no identity card has been proved on record through which it can be ascertain that the contract of the workman has been extended upto 07.07.2008. The workman has only proved on record Exhibit 'AW3' i.e. order No.196/ECD/CTU/HOD/2004 28.06.2004 in which he has been appointed on purely on contractual basis for 89 days thereafter one order dated 01.04.2005 through which the contract of the workman was extended for a period of 89 days i.e. 02.04.2005 to 29.06.2005. Hence, no order with regard to extension from 07.04.2006 placed on record.

14. Arguments addressed by the workman that it is admitted by the management witness that the contract of the workman was extended from time to time. I have gone through the cross-examination of MW1. MW1 during her cross-examination admitted that initially the contractual appointment was for 89 days and it was extended from time to time after gap of two three days. Hence, MW1 simply admitted with regard to extension of 89 days but has not directly admitted contractual extension for the period from 07.04.2006. Document with regard to extension of contractual period from 07.04.2006 has not been proved on file that document is very much material to pursue from which date the workman further joined the services.

15. Further it is stand of the workman that on 27.04.2006 he performed the duties and in the evening his services have been terminated by stating that regular appointment of SC / OBC category has been made. The workman himself while stepping into the witness box as AW1 admitted this fact in his cross-examination that the department has terminated his services along with other Driver in the year 2007 on joining of regular incumbents. Meaning thereby the services of the Driver has been terminated on joining of regular appointment. Further this fact is very well made clear in the order dated 28.06.2004 Exhibit 'AW3' that **the services of the workman shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual services.** Similarly, in order dated 01.04.2005 it is also mentioned that the terms & conditions of appointment will remain the same as laid down in the appointment letter bearing No.196/ECD/HOD/CTU/2004, dated 28.06.2004. So it is crystal clear from the aforesaid discussion that the workman has failed to prove any documentary proof with regard to extension of his service whereas as per order of Exhibit 'AW3' the management has terminated the services of the workman as per appointment as regular appointment already been joined on the same day on which date the workman alleged to terminated from the services. Hence, the workman is not entitled for retrenchment compensation. Arguments of the workman that his case is totally covered under the award dated 27.02.2013 does not inspire confidence as in that case the contractual Drivers were ordered to be reinstated as regular vacancies were lying **at that time** but in the present case in hand there is nothing on the file that **regular vacancies were existed at the time of termination of the workman** rather it is admitted by the workman himself regular appointment have been made on the same day when his termination has been made. Hence, termination is not illegal. This issue is decided against the workman and in favour of the management.

Issue No. 2 :

16. Onus to prove this issue was on the management. Learned representative for the management has argued that the present claim of the workman is not maintainable being highly belated. Impugned order was passed in the year 2006 whereas the present claim challenging the same was filed after 10 years of cause of action. On the other hand, there is no bar of limitation to challenge termination under the ID Act.

17. I have considered the submission of learned Law Officer for the management and learned representative for the workman. Admittedly, the services of the workman were terminated in the year 2006 and the demand notice, on the basis of which the present industrial dispute has been raised and statement of claim filed, was filed 16.08.2015. Although there is no time limit to make reference under Section 10 of the ID Act but there *must be* reasonable justification under for the delay. In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court**. In the present case in hand, no reasonable justification has been putforth by the workman for challenging his termination after more than nine years. In the light of law laid down and discussion made above, the present claim of the workman is barred by delay and laches. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

18. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20th September, 2021.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9809-HII(2)-2021/12751.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 57/2017, dated 20.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SURINDER RANA S/O SHRI DASONDHI RAM, R/O 80, SAINI VIHAR, PHASE-I, VPO BALTANA, TEHSIL DERABASSI, DISTRICT MOHALI, PUNJAB (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH.
2. DIRECTOR TRANSPORT, UNION TERRITORY, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the Chandigarh Transport Undertaking (*hereinafter called 'CTU'*), which is a public undertaking owned and run by the Union Territory Administration, Chandigarh, there was an acute shortage of Drivers and as a result thereof, the Drivers had to perform double duty and were being paid overtime. To cope with shortage of Driver, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003, whereby 45 vacancies of Drivers were advertised on contract basis. The workman being fully eligible applied for the post of bus Driver, his name was recommended by the Employment Exchange. He was called for Dug Test and Road Test and was called for interview in May 2004. The workman being successful, was selected and appointed as Driver *vide* appointment letter dated 28.06.2004. Thereafter the workman was subjected to medical test and he was also imparted traffic education on 28.06.2004. The appointment of the workman was made after following the due procedure of law and by considering other candidates, who had applied in pursuance to the advertisement, recommended by the Employment Exchange. Terms of contract of the workman was extended from time to time. Last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. The workman had performed his duties to the entire satisfaction of his superiors and there is nothing adverse against him and he was deputed on local / long route bus. The workman had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointment of Bus Drivers in SC / OBC category have been made so the contract of the workman stand terminated. As on date also various posts of Drivers are lying vacant so his services cannot be terminated. The workman was also not paid retrenchment compensation and neither any notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and had not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with the provisions of Section 25-G & 25-H of the ID Act as many fresh persons as Drivers were appointed without offering the same post to the workman being retrenched employee. Action of the management is illegal & violative of Article 14 & 16 of the Constitution of India. The workman had become now overage to seek employment elsewhere. He is the only bread earner in his family and with his illegal termination his family has been ruined. The management has also not paid

gratuity to the workman on his illegal termination. The claim of the workman is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh, whereby the claim of similarly situated employees have been accepted and the said award has also been implemented by the management. Termination of the workman is also not justified as work is available with the management and after termination of his service the contractual staff has been engaged in violation of settled law that the contractual employees cannot be replaced by another contractual employee and when the work is of permanent nature. Ultimately, it is prayed that the workman be reinstated into service along with continuity of service and back wages along with interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim of the workman is highly belated as his services were dispensed with *vide* office order dated 27.04.2006 and the present claim has been filed in the year 2016 i.e. after 10 years of cause of action. On merits, it is pleaded that there was no issue of shortage of Drivers and over time as well with the management. Advertisement with regard to recruitment of 45 Drivers on the contract basis was made *vide* notice dated 11.10.2003. An order of appointment *vide* office order No.196/ECD/CTU/HOD/2004, dated 28.06.2004 was issued for appointment of the workman on the basis of recommendations in the interview held on 18.05.2004 for enrollment / engagement on contract basis for the post of Bus Driver. It was contemplated in the appointment order of the workman that he was engaged purely on the contract basis for a period of 89 days or till the regular incumbents, whichever is earlier. Further it was made clear that his services shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to him on account of discontinuation of his contractual services. Terms of the contract were extended from time to time. The workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment order, the services of the contractual Drivers can be dispensed with at any time without assigning any reason or without giving any notice. Services of the workman have been dispensed with, as per the terms & conditions of the contract and the workman is not entitled to get any type of relief from this Court. The award dated 27.02.2013 passed by this Court is not applicable in this case. The management had also recruited Drivers on contract basis in the year 1999 apart from the batch of the workman on the same terms & conditions and their services were dispensed with according to the terms & conditions of the contract but they approached before the Hon'ble Central Administrative Tribunal (CAT) by filing original applications through OA No.1159/CH/2004 which was disposed of *vide* order dated 24.05.2006 with the directions to the management to continue the services of the contractual Drivers against the vacant post till the regular incumbents are appointed. Some of the contractual Drivers approached this Court by different references and one of the references was disposed of *vide* award dated 27.02.2013 whereby the workmen were ordered to be reinstated with 50% back wages only against the vacant post on regular basis. But at the time of termination of the contract of the workman no vacant post was available with the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by delay & latches ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Baljeet Kaur as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No.1:

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that the CTU is a public undertaking owned and run by the Union Territory Administration, Chandigarh. There was an acute shortage of Drivers so the Drivers had to perform double duty and were being paid overtime and to cope with the same, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003 whereby 45 vacancies of Drivers were advertised on contract basis. He being fully eligible applied for the post of Bus Driver and his name was recommended by the Employment Exchange. He was called for dug test and road test and called for interview in May 2004. He was selected & appointed as Driver vide appointment letter dated 28.06.2004, subject to medical test. He was also imparted traffic education on 28.06.2004. He further deposed that his appointment was made after following due procedure of law. Terms of contract was extended from time to time and last extension order was issued by the CTU vide order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. His identity card was extended upto 07.07.2008. He had performed his duties to the entire satisfaction of his superiors. He further deposed that he had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointments of Bus Driver in SC / OBC category have been made so his contract stand terminated. As on date various posts of Drivers are lying vacant so his services cannot be terminated. He was also not paid retrenchment compensation and no notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and not sought mandatory permission from the appropriate authority before terminating his services. The management has also complied with the provisions of Section 25-G & 25-H of the ID Act as fresh Drivers were appointed without offering the same post to him being retrenched. Action of the management is illegal & violative of Article 14 & 16 Constitution of India. He further deposed that his claim is squarely covered by the award dated 27.02.2013 published vide notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013.

8. Learned representative for the workman has argued that as per the advertisement in 'Punjab Tribune' newspaper the workman applied for the post of Driver and recommended by the Employment Exchange thereafter in May 2004 a road test was conducted and he was called for interview in May 2004 and being successfully he was appointed on 28.06.2004 and his medical tested was conducted and imparted traffic deduction on 28.06.2004. He further argued that on 27.04.2006 the workman performed his duties and in the evening of 27.04.2006 his services have been terminated by stating that since the regular appointment of the Bus Driver in SC / OBC category have been made therefore contract of the workman stands terminated. The services of the workman cannot be terminated as various posts are lying vacant the workman has also not been paid retrenchment compensation. No notice for retrenchment compensation was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act. The management has also not complied with the provisions of Section 25-G & 25-H of the ID Act. The case of the workman is clearly covered by the award dated 27.02.2013 published vide notification No.13/1/8640-HII(2)/2013/9958, dated 29.05.2013 passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh. Hence, the termination of the workman is illegal. He prayed for deciding this issue in favour of the workman.

9. On the other hand, learned Law Officer for the management has examined Smt. Baljeet Kaur as MW1, who deposed that the workman was appointed by the management purely on the contract basis vide appointment order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. The services of the workman were hired purely on temporary basis for specific period or till the regular incumbents join the department. Terms & conditions of the appointment order were adduced in writing which were duly accepted by the workman. As per appointment order, the contractual appointment will not confer any right for regular appointment with the management and the services of the workman can be dispensed with at any time without assigning any reason

or without giving any notice. She further deposed that terms of the contract were extended from time to time and the workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment, the services of the contractual Drivers can be dispensed with any time without assigning any reason or without giving any notice. She further deposed that the award dated 27.02.2013 passed by this Court is not applicable in the present case as at the time of termination of the contract of the workman, no vacant post was available with the management.

10. Learned Law Officer for the management has argued that the workman has been appointed on the contract basis and he was not terminated rather his services were dispensed with, on appointment of Bus Drivers on regular basis, as per terms & conditions of the appointment letter. Hence, the workman is not entitled for any retrenchment compensation and he prayed for deciding this issue against the workman and in favour of the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management purely on contract basis *vide* order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. It is also not disputed the terms of the workman was extended from time to time. The main grudge of the workman is that he has been terminated without any notice and he has not been given any retrenchment compensation and he is totally relying upon the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh.

12. The workman has duly proved on record Exhibit 'AW1' which is bio-data of the workman, Exhibit 'AW2' medical examination of the workman, Exhibit 'AW3' order of appointment dated 28.06.2004 i.e. through which the workman was engaged as Bus Driver on contractual basis for a period of 89 days or till the regular appointment of the candidate belong to the SC / OBC as Bus Driver whichever is earlier, Exhibit 'AW4' letter with regard to information regarding traffic education to CTU Bus Driver, Exhibit 'AW5' copy of 'Punjab Tribune' newspaper edition through which the advertisement regarding appointment of 45 Drivers on contract basis was advertised, Exhibit 'AW6' copy of deployment letter dated 25.05.2004, Exhibit 'AW7' copy Chandigarh Administration Gazette dated 29.05.2013.

13. The workman himself is stating that he has been dispensed / terminated from service on 27.04.2006 whereas he has joined on 07.04.2006 as per order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006 and he has relied upon identity card which has been extended on 07.07.2008. Firstly, the workman failed to prove and produce on record in order No. 4394/ECD/HOD/CTU/2006 dated 07.04.2006 through which the service / contract of the workman was extended for further 89 days and no identity card has been proved on record through which it can be ascertain that the contract of the workman has been extended upto 07.07.2008. The workman has only proved on record Exhibit 'AW3' i.e. order No.196/ECD/CTU/HOD/2004 28.06.2004 in which he has been appointed on purely on contractual basis for 89 days thereafter one order dated 01.04.2005 through which the contract of the workman was extended for a period of 89 days i.e. 02.04.2005 to 29.06.2005. Hence, no order with regard to extension from 07.04.2006 placed on record.

14. Arguments addressed by the workman that it is admitted by the management witness that the contract of the workman was extended from time to time. I have gone through the cross-examination of MW1. MW1 during her cross-examination admitted that initially the contractual appointment was for 89 days and it was extended from time to time after gap of two three days. Hence, MW1 simply admitted with regard to extension of 89 days but has not directly admitted contractual extension for the period from 07.04.2006. Document with regard to extension of contractual period from 07.04.2006 has not been proved on file that document is very much material to pursue from which date the workman further joined the services.

15. Further it is stand of the workman that on 27.04.2006 he performed the duties and in the evening his services have been terminated by stating that regular appointment of SC / OBC category has been made. The workman himself while stepping into the witness box as AW1 admitted this fact in his cross-examination that the department has terminated his services along with other Driver in the year 2007 on joining of regular incumbents. Meaning thereby the services of the Driver has been terminated on joining of regular appointment. Further this fact is very well made clear in the order dated 28.06.2004 Exhibit 'AW3' that the **services of the workman shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual services.** Similarly, in order dated 01.04.2005 it is also mentioned that the terms & conditions of appointment will remain the same as laid down in the appointment letter bearing No.196/ECD/HOD/CTU/2004, dated 28.06.2004. So it is crystal clear from the aforesaid discussion that the workman has failed to prove any documentary proof with regard to extension of his service whereas as per order of Exhibit 'AW3' the management has terminated the services of the workman as per appointment as regular appointment already been joined on the same day on which date the workman alleged to terminated from the services. Hence, the workman is not entitled for retrenchment compensation. Arguments of the workman that his case is totally covered under the award dated 27.02.2013 does not inspire confidence as in that case the contractual Drivers were ordered to be reinstated as regular vacancies were lying at **that time** but in the present case in hand there is nothing on the file that **regular vacancies were existed at the time of termination of the workman rather** it is admitted by the workman himself regular appointment have been made on the same day when his termination has been made. Hence, termination is not illegal. This issue is decided against the workman and in favour of the management.

Issue No.2 :

16. Onus to prove this issue was on the management. Learned representative for the management has argued that the present claim of the workman is not maintainable being highly belated. Impugned order was passed in the year 2006 whereas the present claim challenging the same was filed after 10 years of cause of action. On the other hand, there is no bar of limitation to challenge termination under the ID Act.

17. I have considered the submission of learned Law Officer for the management and learned representative for the workman. Admittedly, the services of the workman were terminated in the year 2006 and the demand notice, on the basis of which the present industrial dispute has been raised and statement of claim filed, was filed 16.08.2015. Although there is no time limit to make reference under Section 10 of the ID Act but there **must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other

employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court**. In the present case in hand, no reasonable justification has been put forth by the workman for challenging his termination after more than nine years. In the light of law laid down and discussion made above, the present claim of the workman is barred by delay and laches. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

18. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20th September, 2021.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9808-HII(2)-2021/12755.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 58/2017, dated 20.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARVINDER SINGH S/O SHRI JASWANT SINGH, R/O HOUSE NO.3412, SECTOR 45-D, CHANDIGARH (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH.
2. DIRECTOR TRANSPORT, UNION TERRITORY, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the Chandigarh Transport Undertaking (*hereinafter called 'CTU'*), which is a public undertaking owned and run by the Union Territory Administration, Chandigarh, there was an acute shortage of Drivers and as a result thereof, the Drivers had to perform double duty and were being paid overtime. To cope with shortage of Driver, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003, whereby 45 vacancies of Drivers were advertised on contract

basis. The workman being fully eligible applied for the post of bus Driver, his name was recommended by the Employment Exchange. He was called for Dug Test and Road Test and was called for interview in May 2004. The workman being successful, was selected and appointed as Driver *vide* appointment letter dated 28.06.2004. Thereafter the workman was subjected to medical test and he was also imparted traffic education on 28.06.2004. The appointment of the workman was made after following the due procedure of law and by considering other candidates, who had applied in pursuance to the advertisement, recommended by the Employment Exchange. Terms of contract of the workman was extended from time to time. Last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. The workman had performed his duties to the entire satisfaction of his superiors and there is nothing adverse against him and he was deputed on local / long route bus. The workman had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointment of Bus Drivers in SC / OBC category have been made so the contract of the workman stand terminated. As on date also various posts of Drivers are lying vacant so his services cannot be terminated. The workman was also not paid retrenchment compensation and neither any notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and had not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with the provisions of Section 25-G & 25-H of the ID Act as many fresh persons as Drivers were appointed without offering the same post to the workman being retrenched employee. Action of the management is illegal & violative of Article 14 & 16 of the Constitution of India. The workman had become now overage to seek employment elsewhere. He is the only bread earner in his family and with his illegal termination his family has been ruined. The management has also not paid gratuity to the workman on his illegal termination. The claim of the workman is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh, whereby the claim of similarly situated employees have been accepted and the said award has also been implemented by the management. Termination of the workman is also not justified as work is available with the management and after termination of his service the contractual staff has been engaged in violation of settled law that the contractual employees cannot be replaced by another contractual employee and when the work is of permanent nature. Ultimately, it is prayed that the workman be reinstated into service along with continuity of service and back wages along with interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim of the workman is highly belated as his services were dispensed with *vide* office order dated 27.04.2006 and the present claim has been filed in the year 2016 i.e. after 10 years of cause of action. On merits, it is pleaded that there was no issue of shortage of Drivers and over time as well with the management. Advertisement with regard to recruitment of 45 Drivers on the contract basis was made *vide* notice dated 11.10.2003. An order of appointment *vide* office order No.196/ECD/CTU/HOD/2004, dated 28.06.2004 was issued for appointment of the workman on the basis of recommendations in the interview held on 18.05.2004 for enrollment / engagement on contract basis for the post of Bus Driver. It was contemplated in the appointment order of the workman that he was engaged purely on the contract basis for a period of 89 days or till the regular incumbents, whichever is earlier. Further it was made clear that his services shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to him on account of discontinuation of his contractual services. Terms of the contract were extended from time to time. The workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment order, the services of the contractual Drivers can be dispensed with at any time without assigning any reason or without giving any notice. Services of the workman have been dispensed with, as per the terms & conditions of the contract and the workman is not entitled to get any type of relief from this Court. The award dated 27.02.2013 passed by this Court is not applicable in this case. The management had

also recruited Drivers on contract basis in the year 1999 apart from the batch of the workman on the same terms & conditions and their services were dispensed with according to the terms & conditions of the contract but they approached before the Hon'ble Central Administrative Tribunal (CAT) by filing original applications through OA No.1159/CH/2004 which was disposed of *vide* order dated 24.05.2006 with the directions to the management to continue the services of the contractual Drivers against the vacant post till the regular incumbents are appointed. Some of the contractual Drivers approached this Court by different references and one of the references was disposed of *vide* award dated 27.02.2013 whereby the workmen were ordered to be reinstated with 50% back wages only against the vacant post on regular basis. But at the time of termination of the contract of the workman no vacant post was available with the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by delay & laches ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No.1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that the CTU is a public undertaking owned and run by the Union Territory Administration, Chandigarh. There was an acute shortage of Drivers so the Drivers had to perform double duty and were being paid overtime and to cope with the same, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003 whereby 45 vacancies of Drivers were advertised on contract basis. He being fully eligible applied for the post of Bus Driver and his name was recommended by the Employment Exchange. He was called for dug test and road test and called for interview in May 2004. He was selected & appointed as Driver *vide* appointment letter dated 28.06.2004, subject to medical test. He was also imparted traffic education on 28.06.2004. He further deposed that his appointment was made after following due procedure of law. Terms of contract was extended from time to time and last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. His identity card was extended upto 07.07.2008. He had performed his duties to the entire satisfaction of his superiors. He further deposed that he had performed his duties upto 27.04.2006, and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointments of Bus Driver in SC / OBC category have been made so his contract stand terminated. As on date various posts of Drivers are lying vacant so his services cannot be terminated. He was also not paid retrenchment compensation and no notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and not sought mandatory permission from the appropriate authority before terminating his services. The management has also complied with the provisions of Section 25-G & 25-H of the ID Act as fresh Drivers were appointed without offering the same post to him being retrenched. Action of the management is illegal & violative of Article 14 & 16 Constitution of India. He further deposed that his claim is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013.

8. Learned representative for the workman has argued that as per the advertisement in 'Punjab Tribune' newspaper the workman applied for the post of Driver and recommended by the Employment Exchange thereafter in May 2004 a road test was conducted and he was called for interview in May 2004 and being successfully he was appointed on 28.06.2004 and his medical tested was conducted and imparted traffic deduction on 28.06.2004. He further argued that on 27.04.2006 the workman performed his duties and in the evening of 27.04.2006 his services have been terminated by stating that since the regular appointment of the Bus Driver in SC / OBC category have been made therefore contract of the workman stands terminated. The services of the workman cannot be terminated as various posts are lying vacant the workman has also not been paid retrenchment compensation. No notice for retrenchment compensation was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act. The management has also not complied with the provisions of Section 25-G & 25-H of the ID Act. The case of the workman is clearly covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)/2013/9958, dated 29.05.2013 passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh. Hence, the termination of the workman is illegal. He prayed for deciding this issue in favour of the workman.

9. On the other hand, learned Law Officer for the management has examined Smt. Jyoti Sareen - Senior Assistant as MW1, who deposed that the workman was appointed by the management purely on the contract basis *vide* appointment order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. The services of the workman were hired purely on temporary basis for specific period or till the regular incumbents join the department. Terms & conditions of the appointment order were adduced in writing which were duly accepted by the workman. As per appointment order, the contractual appointment will not confer any right for regular appointment with the management and the services of the workman can be dispensed with at any time without assigning any reason or without giving any notice. She further deposed that terms of the contract were extended from time to time and the workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment, the services of the contractual Drivers can be dispensed with any time without assigning any reason or without giving any notice. She further deposed that the award dated 27.02.2013 passed by this Court is not applicable in the present case as at the time of termination of the contract of the workman, no vacant post was available with the management.

10. Learned Law Officer for the management has argued that the workman has been appointed on the contract basis and he was not terminated rather his services were dispensed with, on appointment of Bus Drivers on regular basis, as per terms & conditions of the appointment letter. Hence, the workman is not entitled for any retrenchment compensation and he prayed for deciding this issue against the workman and in favour of the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management purely on contract basis *vide* order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. It is also not disputed the terms of the workman was extended from time to time. The main grudge of the workman is that he has been terminated without any notice and he has not been given any retrenchment compensation and he is totally relying upon the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh. \

12. The workman has duly proved on record Exhibit 'AW1' which is bio-data of the workman, Exhibit 'AW2' medical examination of the workman, Exhibit 'AW3' order of appointment dated 28.06.2004 i.e. through which the workman was engaged as Bus Driver on contractual basis for a period of 89 days or till the regular appointment of the candidate belong to the SC / OBC as Bus Driver whichever is earlier, Exhibit 'AW4' letter with regard to information regarding traffic education to CTU Bus Driver, Exhibit 'AW5' copy of 'Punjab Tribune' newspaper edition through which the advertisement regarding appointment of 45 Drivers on contract basis was advertised, Exhibit 'AW6' copy of letter of deployment of the workman bearing No.5569/ECD/CTU/HOD/2004, dated 25.05.2004, Exhibit 'AW7' copy Chandigarh Administration Gazette dated 29.05.2013.

13. The workman himself is stating that he has been dispensed / terminated from service on 27.04.2006 whereas he has joined on 07.04.2006 as per order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006 and he has relied upon identity card which has been extended on 07.07.2008. Firstly, the workman failed to prove and produce on record in order No. 4394/ECD/HOD/CTU/2006, dated 07.04.2006 through which the service / contract of the workman was extended for further 89 days and no identity card has been proved on record through which it can be ascertain that the contract of the workman has been extended upto 07.07.2008. The workman has only proved on record Exhibit 'AW3' i.e. order No.196/ECD/CTU/HOD/2004 28.06.2004 in which he has been appointed on purely on contractual basis for 89 days thereafter one order dated 01.04.2005 through which the contract of the workman was extended for a period of 89 days i.e. 02.04.2005 to 29.06.2005. Hence, no order with regard to extension from 07.04.2006 placed on record.

14. Arguments addressed by the workman that it is admitted by the management witness that the contract of the workman was extended from time to time. I have gone through the cross-examination of MW1. MW1 during her cross-examination admitted that initially the contractual appointment was for 89 days and it was extended from time to time after gap of two three days. Hence, MW1 simply admitted with regard to extension of 89 days but has not directly admitted contractual extension for the period from 07.04.2006. Document with regard to extension of contractual period from 07.04.2006 has not been proved on file that document is very much material to pursue from which date the workman further joined the services.

15. Further it is stand of the workman that on 27.04.2006 he performed the duties and in the evening his services have been terminated by stating that regular appointment of SC / OBC category has been made. The workman himself while stepping into the witness box as AW1 admitted this fact in his cross-examination that the department has terminated his services along with other Driver in the year 2007 on joining of regular incumbents. Meaning thereby the services of the Driver has been terminated on joining of regular appointment. Further this fact is very well made clear in the order dated 28.06.2004 Exhibit 'AW3' that **the services of the workman shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual services.** Similarly, in order dated 01.04.2005 it is also mentioned that the terms & conditions of appointment will remain the same as laid down in the appointment letter bearing No.196/ECD/HOD/CTU/2004, dated 28.06.2004. So it is crystal clear from the aforesaid discussion that the workman has failed to prove any documentary proof with regard to extension of his service whereas as per order of Exhibit 'AW3' the management has terminated the services of the workman as per appointment as regular appointment already been joined on the same day on which date the workman alleged to terminated from the services. Hence, the workman is not entitled for retrenchment compensation. Arguments of the workman that his case is totally covered under the award dated 27.02.2013 does not inspire confidence as in that case the contractual Drivers were ordered to be reinstated as regular vacancies were lying **at that time** but in the present case in hand there is nothing on the file that **regular vacancies were existed at the time of termination of the workman** rather it is admitted by the workman himself regular appointment have been made on the same day when his termination has been made. Hence, termination is not illegal. This issue is decided against the workman and in favour of the management.

Issue No. 2 :

16. Onus to prove this issue was on the management. Learned representative for the management has argued that the present claim of the workman is not maintainable being highly belated. Impugned order was passed in the year 2006 whereas the present claim challenging the same was filed after 10 years of cause of action. On the other hand, there is no bar of limitation to challenge termination under the ID Act.

17. I have considered the submission of learned Law Officer for the management and learned representative for the workman. Admittedly, the services of the workman were terminated in the year 2006 and the demand notice, on the basis of which the present industrial dispute has been raised and statement of claim filed, was filed 16.08.2015. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.** In the present case in hand, no reasonable justification has been putforth by the workman for challenging his termination after more than nine years. In the light of law laid down and discussion made above, the present claim of the workman is barred by delay and laches. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

18. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20th September, 2021.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9810-HII(2)-2021/12757.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 115/2016, dated 01.10.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MANPREET SINGH S/O SHRI RAGHBIR SINGH, R/O HOUSE NO.7307/4, BANS MOHALLA, AMBALA CITY (Workman)

AND

1. A. B. SUGARS LIMITED THROUGH ITS AUTHORISED SIGNATORY, VILLAGE RANDHAWA, POST OFFICE PANWAN, TEHSIL DASUYA, DISTRICT HOSHIARPUR, PUNJAB — 144205.
2. A. B. SUGARS LIMITED THROUGH ITS AUTHORISED SIGNATORY, SCO NO.269, 1st FLOOR, SECTOR 32-D, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in nutshell is that he was appointed as Legal Advisor by the management in August 2011 and on 30.03.2016 his services were terminated without giving any show cause notice, without conducting any inquiry or giving one month's salary.

3. The management contested the case of the workman and filed written statement raising preliminary objection that Shri Manpreet Singh does not fall within the ambit of the Section 2(s) of the ID Act. On merits, it pleaded that he was appointed as Legal Advisor by the management to assist the advocates on the panel of the answering management. He abstained from the workman after 30.03.2016 and voluntarily abandoned the services.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether Shri Manpreet Singh is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
2. Whether the services of Shri Manpreet Singh were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. The workman also examined Shri Arun Kumar – Clerk, office of the Assistant Labour Commissioner, Union Territory, Chandigarh as AW2.

6. During the pendency of the present industrial dispute, the workman along with his representative and the AGM of the management along his representative made the following joint statement:-

"The matter has been settled between the parties. As per the verbal settlement the management is ready to give two months salary i.e. Rs.36,500/- per month and 89 days leave encashment (salary of approximately 5 months) towards full & final settlement with regard to the service benefits with the company. The applicant is ready to accept this amount towards his entire claim with regard to entire service benefits. However, the applicant is entitled for the provident fund contribution amount and the management shall cooperate for the release of provident fund dues of the applicant. The present industrial dispute may be disposed off accordingly."

In view of the above statement, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

The 1st October, 2021.

(Sd.) . . . ,
(ANSHUL BERRY)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9803-HII(2)-2021/12763.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 122/2016, dated 20.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

HARNEK SINGH S/O SHRI GIAN SINGH, R/O VILLAGE RAMGARH, ROOKI, P.O. LALRU, TEHSIL DERABASSI, DISTRICT MOHALI, PUNJAB. (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH.
2. DIRECTOR TRANSPORT, UNION TERRITORY, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the Chandigarh Transport Undertaking (*hereinafter called 'CTU'*), which is a public undertaking owned and run by the Union Territory Administration, Chandigarh, there was an acute shortage of Drivers and as a result thereof, the Drivers had to perform double duty and were being paid overtime. To cope with shortage of Driver, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003, whereby 45 vacancies of Drivers were advertised on contract basis. The workman being fully eligible applied for the post of bus Driver, his name was recommended by the Employment Exchange. He was called for Dug Test and Road Test and was called for interview in May 2004.

The workman being successful, was selected and appointed as Driver *vide* appointment letter dated 28.06.2004. Thereafter the workman was subjected to medical test and he was also imparted traffic education on 28.06.2004. The appointment of the workman was made after following the due procedure of law and by considering other candidates, who had applied in pursuance to the advertisement, recommended by the Employment Exchange. Terms of contract of the workman was extended from time to time. Last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. The workman had performed his duties to the entire satisfaction of his superiors and there is nothing adverse against him and he was deputed on local / long route bus. The workman had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointment of Bus Drivers in SC / OBC category have been made so the contract of the workman stand terminated. As on date also various posts of Drivers are lying vacant so his services cannot be terminated. The workman was also not paid retrenchment compensation and neither any notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and had not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with the provisions of Section 25-G & 25-H of the ID Act as many fresh persons as Drivers were appointed without offering the same post to the workman being retrenched employee. Action of the management is illegal & violative of Article 14 & 16 of the Constitution of India. The workman had become now overage to seek employment elsewhere. He is the only bread earner in his family and with his illegal termination his family has been ruined. The management has also not paid gratuity to the workman on his illegal termination. The claim of the workman is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh, whereby the claim of similarly situated employees have been accepted and the said award has also been implemented by the management. Termination of the workman is also not justified as work is available with the management and after termination of his service the contractual staff has been engaged in violation of settled law that the contractual employees cannot be replaced by another contractual employee and when the work is of permanent nature. Ultimately, it is prayed that the workman be reinstated into service along with continuity of service and back wages along with interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim of the workman is highly belated as his services were dispensed with *vide* office order dated 27.04.2006 and the present claim has been filed in the year 2016 i.e. after 10 years of cause of action. On merits, it is pleaded that there was no issue of shortage of Drivers and over time as well with the management. Advertisement with regard to recruitment of 45 Drivers on the contract basis was made *vide* notice dated 11.10.2003. An order of appointment *vide* office order No.196/ECD/CTU/HOD/2004, dated 28.06.2004 was issued for appointment of the workman on the basis of recommendations in the interview held on 18.05.2004 for enrollment / engagement on contract basis for the post of Bus Driver. It was contemplated in the appointment order of the workman that he was engaged purely on the contract basis for a period of 89 days or till the regular incumbents, whichever is earlier. Further it was made clear that his services shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to him on account of discontinuation of his contractual services. Terms of the contract were extended from time to time. The workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment order, the services of the contractual Drivers can be dispensed with at any time without assigning any reason or without giving any notice. Services of the workman have been dispensed with, as per the terms & conditions of the contract and the workman is not entitled to get any type of relief from this Court. The award dated 27.02.2013 passed by this Court is not applicable in this case. The management had also recruited Drivers on contract basis in the year 1999 apart from the batch of the workman on the same terms & conditions and their services were dispensed with according to the terms & conditions of the contract but they approached before the Hon'ble Central Administrative Tribunal (CAT) by filing original applications through OANo.1159/CH/2004

which was disposed of *vide* order dated 24.05.2006 with the directions to the management to continue the services of the contractual Drivers against the vacant post till the regular incumbents are appointed. Some of the contractual Drivers approached this Court by different references and one of the references was disposed of *vide* award dated 27.02.2013 whereby the workmen were ordered to be reinstated with 50% back wages only against the vacant post on regular basis. But at the time of termination of the contract of the workman no vacant post was available with the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by delay & laches ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No.1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that the CTU is a public undertaking owned and run by the Union Territory Administration, Chandigarh. There was an acute shortage of Drivers so the Drivers had to perform double duty and were being paid overtime and to cope with the same, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003 whereby 45 vacancies of Drivers were advertised on contract basis. He being fully eligible applied for the post of Bus Driver and his name was recommended by the Employment Exchange. He was called for dug test and road test and called for interview in May 2004. He was selected & appointed as Driver *vide* appointment letter dated 28.06.2004, subject to medical test. He was also imparted traffic education on 28.06.2004. He further deposed that his appointment was made after following due procedure of law. Terms of contract was extended from time to time and last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. His identity card was extended upto 07.07.2008. He had performed his duties to the entire satisfaction of his superiors. He further deposed that he had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointments of Bus Driver in SC / OBC category have been made so his contract stand terminated. As on date various posts of Drivers are lying vacant so his services cannot be terminated. He was also not paid retrenchment compensation and no notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and not sought mandatory permission from the appropriate authority before terminating his services. The management has also complied with the provisions of Section 25-G & 25-H of the ID Act as fresh Drivers were appointed without offering the same post to him being retrenched. Action of the management is illegal & violative of Article 14 & 16 Constitution of India. He further deposed that his claim is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013.

8. Learned representative for the workman has argued that as per the advertisement in 'Punjab Tribune' newspaper the workman applied for the post of Driver and recommended by the Employment Exchange thereafter in May 2004 a road test was conducted and he was called for interview in May 2004 and being

successfully he was appointed on 28.06.2004 and his medical tested was conducted and imparted traffic deduction on 28.06.2004. He further argued that on 27.04.2006 the workman performed his duties and in the evening of 27.04.2006 his services have been terminated by stating that since the regular appointment of the Bus Driver in SC / OBC category have been made therefore contract of the workman stands terminated. The services of the workman cannot be terminated as various posts are lying vacant the workman has also not been paid retrenchment compensation. No notice for retrenchment compensation was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act. The management has also not complied with the provisions of Section 25-G & 25-H of the ID Act. The case of the workman is clearly covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)/2013/9958, dated 29.05.2013 passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh. Hence, the termination of the workman is illegal. He prayed for deciding this issue in favour of the workman.

9. On the other hand, learned Law Officer for the management has examined Smt. Jyoti Sareen - Senior Assistant as MW1, who deposed that the workman was appointed by the management purely on the contract basis *vide* appointment order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. The services of the workman were hired purely on temporary basis for specific period or till the regular incumbents join the department. Terms & conditions of the appointment order were adduced in writing which were duly accepted by the workman. As per appointment order, the contractual appointment will not confer any right for regular appointment with the management and the services of the workman can be dispensed with at any time without assigning any reason or without giving any notice. She further deposed that terms of the contract were extended from time to time and the workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment, the services of the contractual Drivers can be dispensed with any time without assigning any reason or without giving any notice. She further deposed that the award dated 27.02.2013 passed by this Court is not applicable in the present case as at the time of termination of the contract of the workman, no vacant post was available with the management.

10. Learned Law Officer for the management has argued that the workman has been appointed on the contract basis and he was not terminated rather his services were dispensed with, on appointment of Bus Drivers on regular basis, as per terms & conditions of the appointment letter. Hence, the workman is not entitled for any retrenchment compensation and he prayed for deciding this issue against the workman and in favour of the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management purely on contract basis *vide* order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. It is also not disputed the terms of the workman was extended from time to time. The main grudge of the workman is that he has been terminated without any notice and he has not been given any retrenchment compensation and he is totally relying upon the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh.

12. The workman has duly proved on record Exhibit 'AW1' which is bio-data of the workman, Exhibit 'AW2' medical examination of the workman, Exhibit 'AW3' order of appointment dated 28.06.2004 i.e. through which the workman was engaged as Bus Driver on contractual basis for a period of 89 days or till the regular appointment of the candidate belong to the SC / OBC as Bus Driver whichever is earlier, Exhibit 'AW4' letter with regard to information regarding traffic education to CTU Bus Driver, Exhibit 'AW5' copy of 'Punjab Tribune' newspaper edition through which the advertisement regarding appointment of 45 Drivers on contract basis was advertised, Exhibit 'AW6' copy of driving licence of the workman, Exhibit 'AW7' copy Chandigarh Administration Gazette dated 29.05.2013.

13. The workman himself is stating that he has been dispensed / terminated from service on 27.04.2006 whereas he has joined on 07.04.2006 as per order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006 and he has relied upon identity card which has been extended on 07.07.2008. Firstly, the workman failed to prove and produce on record in order No. 4394/ECD/HOD/CTU/2006, dated 07.04.2006 through which the service / contract of the workman was extended for further 89 days and no identity card has been proved on record through which it can be ascertain that the contract of the workman has been extended upto 07.07.2008.

The workman has only proved on record Exhibit 'AW3' i.e. order No.196/ECD/CTU/HOD/2004 28.06.2004 in which he has been appointed on purely on contractual basis for 89 days thereafter one order dated 01.04.2005 through which the contract of the workman was extended for a period of 89 days i.e. 02.04.2005 to 29.06.2005. Hence, no order with regard to extension from 07.04.2006 placed on record.

14. Arguments addressed by the workman that it is admitted by the management witness that the contract of the workman was extended from time to time. I have gone through the cross-examination of MW1. MW1 during her cross-examination admitted that initially the contractual appointment was for 89 days and it was extended from time to time after gap of two three days. Hence, MW1 simply admitted with regard to extension of 89 days but has not directly admitted contractual extension for the period from 07.04.2006. Document with regard to extension of contractual period from 07.04.2006 has not been proved on file that document is very much material to pursue from which date the workman further joined the services.

15. Further it is stand of the workman that on 27.04.2006 he performed the duties and in the evening his services have been terminated by stating that regular appointment of SC / OBC category has been made. The workman himself while stepping into the witness box as AW1 admitted this fact in his cross-examination that the department has terminated his services along with other Driver in the year 2007 on joining of regular incumbents. Meaning thereby the services of the Driver has been terminated on joining of regular appointment. Further this fact is very well made clear in the order dated 28.06.2004 Exhibit 'AW3' **that the services of the workman shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual services.** Similarly, in order dated 01.04.2005 it is also mentioned that the terms & conditions of appointment will remain the same as laid down in the appointment letter bearing No.196/ECD/HOD/CTU/2004, dated 28.06.2004. So it is crystal clear from the aforesaid discussion that the workman has failed to prove any documentary proof with regard to extension of his service whereas as per order of Exhibit 'AW3' the management has terminated the services of the workman as per appointment as regular appointment already been joined on the same day on which date the workman alleged to terminated from the services. Hence, the workman is not entitled for retrenchment compensation. Arguments of the workman that his case is totally covered under the award dated 27.02.2013 does not inspire confidence as in that case the contractual Drivers were ordered to be reinstated as regular vacancies were lying at **that time** but in the present case in hand there is nothing on the file that **regular vacancies were existed at the time of termination of the workman** rather it is admitted by the workman himself regular appointment have been made on the same day when his termination has been made. Hence, termination is not illegal. This issue is decided against the workman and in favour of the management.

Issue No.2 :

16. Onus to prove this issue was on the management. Learned representative for the management has argued that the present claim of the workman is not maintainable being highly belated. Impugned order was passed in the year 2006 whereas the present claim challenging the same was filed after 10 years of cause of action. On the other hand, there is no bar of limitation to challenge termination under the ID Act.

17. I have considered the submission of learned Law Officer for the management and learned representative for the workman. Admittedly, the services of the workman were terminated in the year 2006 and the demand notice, on the basis of which the present industrial dispute has been raised and statement of claim filed, was filed 16.08.2015. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on

citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court**. In the present case in hand, no reasonable justification has been put forth by the workman for challenging his termination after more than nine years. In the light of law laid down and discussion made above, the present claim of the workman is barred by delay and laches. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

18. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20th September, 2021.

(Sd.) . . . ,
(ANSHUL BERRY)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9804-HII(2)-2021/12765.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 125/2016, dated 20.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AMARJIT SINGH S/O SHRI GURDIAL, R/O VPO BALTANA, TEHSIL DERABASSI,
DISTRICT MOHALI, PUNJAB (DRIVER NO.65-A) (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH.
2. DIRECTOR TRANSPORT, UNION TERRITORY, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the Chandigarh Transport Undertaking (*hereinafter called 'CTU'*), which is a public undertaking owned and run by the Union Territory Administration, Chandigarh, there was an acute shortage of Drivers and as a result thereof, the Drivers had to perform double duty and were being paid overtime. To cope with shortage of Driver, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003, whereby 45 vacancies of Drivers were advertised on contract basis. The workman being fully eligible applied for the post of bus Driver, his name was recommended by the Employment Exchange. He was called for Dug Test and Road Test and was called for interview in May 2004. The workman being successful, was selected and appointed as Driver *vide* appointment letter dated 28.06.2004. Thereafter the workman was subjected to medical test and he was also imparted traffic education on 28.06.2004. The appointment of the workman was made after following the due procedure of law and by considering other candidates, who had applied in pursuance to the advertisement, recommended by the Employment Exchange. Terms of contract of the workman was extended from time to time. Last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. The workman had performed his duties to the entire satisfaction of his superiors and there is nothing adverse against him and he was deputed on local / long route bus. The workman had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointment of Bus Drivers in SC / OBC category have been made so the contract of the workman stand terminated. As on date also various posts of Drivers are lying vacant so his services cannot be terminated. The workman was also not paid retrenchment compensation and neither any notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and had not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with the provisions of Section 25-G & 25-H of the ID Act as many fresh persons as Drivers were appointed without offering the same post to the workman being retrenched employee. Action of the management is illegal & violative of Article 14 & 16 of the Constitution of India. The workman had become now overage to seek employment elsewhere. He is the only bread earner in his family and with his illegal termination his family has been ruined. The management has also not paid gratuity to the workman on his illegal termination. The claim of the workman is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh, whereby the claim of similarly situated employees have been accepted and the said award has also been implemented by the management. Termination of the workman is also not justified as work is available with the management and after termination of his service the contractual staff has been engaged in violation of settled law that the contractual employees cannot be replaced by another contractual employee and when the work is of permanent nature. Ultimately, it is prayed that the workman be reinstated into service along with continuity of service and back wages along with interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim of the workman is highly belated as his services were dispensed with *vide* office order dated 27.04.2006 and the present claim has been filed in the year 2016 i.e. after 10 years of cause of action. On merits, it is pleaded that there was no issue of shortage of Drivers and over time as well with the management. Advertisement with regard to recruitment of 45 Drivers on the contract basis was made *vide* notice dated 11.10.2003. An order of appointment *vide* office order No.196/ECD/CTU/HOD/2004, dated 28.06.2004 was issued for appointment of the workman on the basis of recommendations in the interview held on 18.05.2004 for enrollment / engagement on contract basis for the post of Bus Driver. It was contemplated in the appointment order of the workman that he was engaged purely on the contract basis for a period of 89 days or till the regular incumbents, whichever is earlier. Further it was made clear that his services shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to him on account of discontinuation of his contractual services. Terms of the contract were extended from time to time. The workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment order,

the services of the contractual Drivers can be dispensed with at any time without assigning any reason or without giving any notice. Services of the workman have been dispensed with, as per the terms & conditions of the contract and the workman is not entitled to get any type of relief from this Court. The award dated 27.02.2013 passed by this Court is not applicable in this case. The management had also recruited Drivers on contract basis in the year 1999 apart from the batch of the workman on the same terms & conditions and their services were dispensed with according to the terms & conditions of the contract but they approached before the Hon'ble Central Administrative Tribunal (CAT) by filing original applications through OANo.1159/CH/2004 which was disposed of *vide* order dated 24.05.2006 with the directions to the management to continue the services of the contractual Drivers against the vacant post till the regular incumbents are appointed. Some of the contractual Drivers approached this Court by different references and one of the references was disposed of *vide* award dated 27.02.2013 whereby the workmen were ordered to be reinstated with 50% back wages only against the vacant post on regular basis. But at the time of termination of the contract of the workman no vacant post was available with the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer:-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by delay & laches ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows:-

Issue No.1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that the CTU is a public undertaking owned and run by the Union Territory Administration, Chandigarh. There was an acute shortage of Drivers so the Drivers had to perform double duty and were being paid overtime and to cope with the same, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003 whereby 45 vacancies of Drivers were advertised on contract basis. He being fully eligible applied for the post of Bus Driver and his name was recommended by the Employment Exchange. He was called for dug test and road test and called for interview in May 2004. He was selected & appointed as Driver *vide* appointment letter dated 28.06.2004, subject to medical test. He was also imparted traffic education on 28.06.2004. He further deposed that his appointment was made after following due procedure of law. Terms of contract was extended from time to time and last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. His identity card was extended upto 07.07.2008. He had performed his duties to the entire satisfaction of his superiors. He further deposed that he had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointments of Bus Driver in SC / OBC category have been made so his contract stand terminated. As on date various posts of Drivers are lying vacant so his services cannot be terminated. He was also not paid retrenchment compensation and no notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and not sought mandatory permission from the appropriate authority before terminating his services. The management has also complied with the provisions of Section 25-G & 25-H of the ID Act as fresh Drivers were appointed without offering the same post to him being retrenched. Action of the management is illegal & violative of Article 14 & 16 Constitution of India. He further deposed that his claim is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013.

8. Learned representative for the workman has argued that as per the advertisement in 'Punjab Tribune' newspaper the workman applied for the post of Driver and recommended by the Employment Exchange thereafter in May 2004 a road test was conducted and he was called for interview in May 2004 and being successfully he was appointed on 28.06.2004 and his medical tested was conducted and imparted traffic deduction on 28.06.2004. He further argued that on 27.04.2006 the workman performed his duties and in the evening of 27.04.2006 his services have been terminated by stating that since the regular appointment of the Bus Driver in SC / OBC category have been made therefore contract of the workman stands terminated. The services of the workman cannot be terminated as various posts are lying vacant the workman has also not been paid retrenchment compensation. No notice for retrenchment compensation was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act. The management has also not complied with the provisions of Section 25-G & 25-H of the ID Act. The case of the workman is clearly covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)/2013/9958, dated 29.05.2013 passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh. Hence, the termination of the workman is illegal. He prayed for deciding this issue in favour of the workman.

9. On the other hand, learned Law Officer for the management has examined Smt. Jyoti Sareen - Senior Assistant as MW1, who deposed that the workman was appointed by the management purely on the contract basis *vide* appointment order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. The services of the workman were hired purely on temporary basis for specific period or till the regular incumbents join the department. Terms & conditions of the appointment order were adduced in writing which were duly accepted by the workman. As per appointment order, the contractual appointment will not confer any right for regular appointment with the management and the services of the workman can be dispensed with at any time without assigning any reason or without giving any notice. She further deposed that terms of the contract were extended from time to time and the workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment, the services of the contractual Drivers can be dispensed with any time without assigning any reason or without giving any notice. She further deposed that the award dated 27.02.2013 passed by this Court is not applicable in the present case as at the time of termination of the contract of the workman, no vacant post was available with the management.

10. Learned Law Officer for the management has argued that the workman has been appointed on the contract basis and he was not terminated rather his services were dispensed with, on appointment of Bus Drivers on regular basis, as per terms & conditions of the appointment letter. Hence, the workman is not entitled for any retrenchment compensation and he prayed for deciding this issue against the workman and in favour of the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management purely on contract basis *vide* order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. It is also not disputed the terms of the workman was extended from time to time. The main grudge of the workman is that he has been terminated without any notice and he has not been given any retrenchment compensation and he is totally relying upon the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh.

12. The workman has duly proved on record Exhibit 'AW1/1' which is bio-data of the workman, Exhibit 'AW1/2' copy of matriculation examination certificate of the workman, Exhibit 'AW1/3' copy of middle standard examination certificate, Exhibit 'AW1/4' copy of mark sheet of matriculation examination, Exhibit 'AW1/5' is copy of experience certificate, Exhibit 'AW1/6' copy of driving licence, Exhibit 'AW1/7' is copy of letter for medical examination, Exhibit 'AW1/8' copy of medical examination of the workman, Exhibit 'AW1/9' is copy of declaration of the workman with regard to medical fitness, Exhibit 'AW1/10' copy of

declaration of the workman, Exhibit 'AW1/10' copy of appointment order bearing No.196/ECD/CTU/HOD/2004, dated 28.06.2004 i.e. through which the workman was engaged as Bus Driver on contractual basis for a period of 89 days or till the regular appointment of the candidate belong to the SC / OBC as Bus Driver whichever is earlier, Exhibit 'AW1/12' & 'AW1/13' copy of 'Punjab Tribune' newspaper edition and in Hindi edition respectively through which the advertisement regarding appointment of 45 Drivers on contract basis was advertised, Exhibit 'AW1/14' is copy of letter dated 5583/ECD/HOD/CTU/2004, dated 25.05.2004 regarding deployment of the workman and affidavit of the workman, Exhibit 'AW1/15' copy of joining report of the workman dated 01.01.2005, Exhibit 'AW1/16' copy of order No.1121/ECD/CTU/HOD/2005, dated 01.04.2005, Exhibit 'AW1/17' copy of identity chit and Exhibit 'AW1/18' copy Chandigarh Administration Gazette dated 29.05.2013.

13. The workman himself is stating that he has been dispensed / terminated from service on 27.04.2006 whereas he has joined on 07.04.2006 as per order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006 and he has relied upon identity card which has been extended on 07.07.2008. Firstly, the workman failed to prove and produce on record in order No. 4394/ECD/HOD/CTU/2006, dated 07.04.2006 through which the service / contract of the workman was extended for further 89 days and no identity card has been proved on record through which it can be ascertain that the contract of the workman has been extended upto 07.07.2008. The workman has only proved on record Exhibit 'AW1/10' i.e. order No.196/ECD/CTU/HOD/2004, 28.06.2004 in which he has been appointed on purely on contractual basis for 89 days thereafter one order dated 01.04.2005 Exhibit 'AW1/16' through which the contract of the workman was extended for a period of 89 days i.e. 02.04.2005 to 29.06.2005. Hence, no order with regard to extension from 07.04.2006 placed on record.

14. Arguments addressed by the workman that it is admitted by the management witness that the contract of the workman was extended from time to time. I have gone through the cross-examination of MW1. MW1 during her cross-examination admitted that initially the contractual appointment was for 89 days and it was extended from time to time after gap of two three days. Hence, MW1 simply admitted with regard to extension of 89 days but has not directly admitted contractual extension for the period from 07.04.2006. Document with regard to extension of contractual period from 07.04.2006 has not been proved on file that document is very much material to pursue from which date the workman further joined the services.

15. Further it is stand of the workman that on 27.04.2006 he performed the duties and in the evening his services have been terminated by stating that regular appointment of SC / OBC category has been made. The workman himself while stepping into the witness box as AW1 admitted this fact in his cross-examination that the department has terminated his services along with other Driver in the year 2007 on joining of regular incumbents. Meaning thereby the services of the Driver has been terminated on joining of regular appointment. Further this fact is very well made clear in the order dated 28.06.2004 Exhibit 'AW1/10' that **the services of the workman shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual services.** Similarly, in order dated 01.04.2005 Exhibit 'AW1/16' it is also mentioned that the terms & conditions of appointment will remain the same as laid down in the appointment letter bearing No.196/ECD/HOD/CTU/2004, dated 28.06.2004. So it is crystal clear from the aforesaid discussion that the workman has failed to prove any documentary proof with regard to extension of his service whereas as per order of Exhibit 'AW1/10' the management has terminated the services of the workman as per appointment as regular appointment already been joined on the same day on which date the workman alleged to terminated from the services. Hence, the workman is not entitled for retrenchment compensation. Arguments of the workman that his case is totally covered under the award dated 27.02.2013 does not inspire confidence as in that case the contractual Drivers were ordered to be reinstated as regular vacancies were lying **at that time** but in the present case in hand there is nothing on the file that **regular vacancies were existed at the time of termination of the workman** rather it is admitted by the workman himself regular appointment have been made on the same day when his termination has been made. Hence, termination is not illegal. This issue is decided against the workman and in favour of the management.

Issue No. 2 :

16. Onus to prove this issue was on the management. Learned representative for the management has argued that the present claim of the workman is not maintainable being highly belated. Impugned order was passed in the year 2006 whereas the present claim challenging the same was filed after 10 years of cause of action. On the other hand, there is no bar of limitation to challenge termination under the ID Act.

17. I have considered the submission of learned Law Officer for the management and learned representative for the workman. Admittedly, the services of the workman were terminated in the year 2006 and the demand notice, on the basis of which the present industrial dispute has been raised and statement of claim filed, was filed 16.08.2015. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under:-

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.** In the present case in hand, no reasonable justification has been put forth by the workman for challenging his termination after more than nine years. In the light of law laid down and discussion made above, the present claim of the workman is barred by delay and laches. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

18. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20th September, 2021.

(Sd.) . . . ,
(ANSHUL BERRY)
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 2nd November, 2021

No. 13/1/9805-HII(2)-2021/12767.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 126/2016, dated 20.09.2021 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

JOGINDER SINGH RANA S/O SHRI RAVAN RAM, R/O VPO KHART, TEHSIL BAROH,
DISTRICT KANGRA, HIMACHAL PARDESH (Workman)

AND

1. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH.
2. DIRECTOR TRANSPORT, UNION TERRITORY, ADDRESS PLOT NO.701, INDUSTRIAL AREA, PHASE - I, CHANDIGARH. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter called 'ID Act'*).

2. Case of the workman in brief is that the Chandigarh Transport Undertaking (*hereinafter called 'CTU'*), which is a public undertaking owned and run by the Union Territory Administration, Chandigarh, there was an acute shortage of Drivers and as a result thereof, the Drivers had to perform double duty and were being paid overtime. To cope with shortage of Driver, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003, whereby 45 vacancies of Drivers were advertised on contract basis. The workman being fully eligible applied for the post of bus Driver, his name was recommended by the Employment Exchange. He was called for Dug Test and Road Test and was called for interview in May 2004. The workman being successful, was selected and appointed as Driver *vide* appointment letter dated 28.06.2004. Thereafter the workman was subjected to medical test and he was also imparted traffic education on 28.06.2004. The appointment of the workman was made after following the due procedure of law and by considering other candidates, who had applied in pursuance to the advertisement, recommended by the Employment Exchange. Terms of contract of the workman was extended from time to time. Last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. The workman had performed his duties to the entire satisfaction of his superiors and there is nothing adverse against him and he was deputed on local / long route bus. The workman had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointment of Bus Drivers in SC / OBC category have been made so the contract of the workman stand terminated. As on date also various posts of Drivers are lying vacant so his services cannot be terminated. The workman was also not paid retrenchment compensation and neither any notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and had not sought mandatory permission from the appropriate authority before terminating the services of the workman. The management had not complied with the provisions of Section 25-G & 25-H of the ID Act as many fresh persons as Drivers were appointed without offering the same post to the workman being retrenched employee. Action of the management is illegal & violative of Article 14 & 16 of the Constitution of India. The workman had become now overage to seek employment elsewhere. He is the only bread earner in his family and with his illegal termination his family has been ruined. The management has also not paid gratuity to the workman on his illegal termination. The claim of the workman is squarely covered by the award dated 27.02.2013

published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory Chandigarh, whereby the claim of similarly situated employees have been accepted and the said award has also been implemented by the management. Termination of the workman is also not justified as work is available with the management and after termination of his service the contractual staff has been engaged in violation of settled law that the contractual employees cannot be replaced by another contractual employee and when the work is of permanent nature. Ultimately, it is prayed that the workman be reinstated into service along with continuity of service and back wages along with interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the claim of the workman is highly belated as his services were dispensed with *vide* office order dated 27.04.2006 and the present claim has been filed in the year 2016 i.e. after 10 years of cause of action. On merits, it is pleaded that there was no issue of shortage of Drivers and over time as well with the management. Advertisement with regard to recruitment of 45 Drivers on the contract basis was made *vide* notice dated 11.10.2003. An order of appointment *vide* office order No.196/ECD/CTU/HOD/2004, dated 28.06.2004 was issued for appointment of the workman on the basis of recommendations in the interview held on 18.05.2004 for enrollment / engagement on contract basis for the post of Bus Driver. It was contemplated in the appointment order of the workman that he was engaged purely on the contract basis for a period of 89 days or till the regular incumbents, whichever is earlier. Further it was made clear that his services shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to him on account of discontinuation of his contractual services. Terms of the contract were extended from time to time. The workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment order, the services of the contractual Drivers can be dispensed with at any time without assigning any reason or without giving any notice. Services of the workman have been dispensed with, as per the terms & conditions of the contract and the workman is not entitled to get any type of relief from this Court. The award dated 27.02.2013 passed by this Court is not applicable in this case. The management had also recruited Drivers on contract basis in the year 1999 apart from the batch of the workman on the same terms & conditions and their services were dispensed with according to the terms & conditions of the contract but they approached before the Hon'ble Central Administrative Tribunal (CAT) by filing original applications through OA No.1159/CH/2004 which was disposed of *vide* order dated 24.05.2006 with the directions to the management to continue the services of the contractual Drivers against the vacant post till the regular incumbents are appointed. Some of the contractual Drivers approached this Court by different references and one of the references was disposed of *vide* award dated 27.02.2013 whereby the workmen were ordered to be reinstated with 50% back wages only against the vacant post on regular basis. But at the time of termination of the contract of the workman no vacant post was available with the answering management. Other averments of the case of the workman were denied and ultimately, it is prayed that claim of the workman be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is barred by delay & laches ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Smt. Jyoti Sareen - Senior Assistant as MW1. Learned Law Officer for the management closed the evidence.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

Issue No. 1 :

7. Onus to prove this issue was on the workman and to discharge the same the workman examined himself as AW1 and deposed that the CTU is a public undertaking owned and run by the Union Territory Administration, Chandigarh. There was an acute shortage of Drivers so the Drivers had to perform double duty and were being paid overtime and to cope with the same, the CTU issued an advertisement in the 'Punjabi Tribune' Chandigarh dated 11.10.2003 whereby 45 vacancies of Drivers were advertised on contract basis. He being fully eligible applied for the post of Bus Driver and his name was recommended by the Employment Exchange. He was called for dug test and road test and called for interview in May 2004. He was selected & appointed as Driver *vide* appointment letter dated 28.06.2004, subject to medical test. He was also imparted traffic education on 28.06.2004. He further deposed that his appointment was made after following due procedure of law. Terms of contract was extended from time to time and last extension order was issued by the CTU *vide* order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006. His identity card was extended upto 07.07.2008. He had performed his duties to the entire satisfaction of his superiors. He further deposed that he had performed his duties upto 27.04.2006 and in the evening of 27.04.2006, his services have been ordered to be terminated by stating that since the regular appointments of Bus Driver in SC / OBC category have been made so his contract stand terminated. As on date various posts of Drivers are lying vacant so his services cannot be terminated. He was also not paid retrenchment compensation and no notice for retrenchment was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act and not sought mandatory permission from the appropriate authority before terminating his services. The management has also complied with the provisions of Section 25-G & 25-H of the ID Act as fresh Drivers were appointed without offering the same post to him being retrenched. Action of the management is illegal & violative of Article 14 & 16 Constitution of India. He further deposed that his claim is squarely covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013.

8. Learned representative for the workman has argued that as per the advertisement in 'Punjab Tribune' newspaper the workman applied for the post of Driver and recommended by the Employment Exchange thereafter in May 2004 a road test was conducted and he was called for interview in May 2004 and being successfully he was appointed on 28.06.2004 and his medical tested was conducted and imparted traffic deduction on 28.06.2004. He further argued that on 27.04.2006 the workman performed his duties and in the evening of 27.04.2006 his services have been terminated by stating that since the regular appointment of the Bus Driver in SC / OBC category have been made therefore contract of the workman stands terminated. The services of the workman cannot be terminated as various posts are lying vacant the workman has also not been paid retrenchment compensation. No notice for retrenchment compensation was issued. The management has not complied with the provisions of Section 25-F & 25-N of the ID Act. The management has also not complied with the provisions of Section 25-G & 25-H of the ID Act. The case of the workman is clearly covered by the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)/2013/9958, dated 29.05.2013 passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh. Hence, the termination of the workman is illegal. He prayed for deciding this issue in favour of the workman.

9. On the other hand, learned Law Officer for the management has examined Smt. Jyoti Sareen - Senior Assistant as MW1, who deposed that the workman was appointed by the management purely on the contract basis *vide* appointment order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. The services of the workman were hired purely on temporary basis for specific period or till the regular incumbents join the department. Terms & conditions of the appointment order were adduced in writing which were duly accepted by the workman. As per appointment order, the contractual appointment will not confer any right for

regular appointment with the management and the services of the workman can be dispensed with at any time without assigning any reason or without giving any notice. She further deposed that terms of the contract were extended from time to time and the workman had performed his services under the stop gap arrangement. The services of the workman were dispensed with *vide* office order dated 27.04.2006. As per Clause 5 of the appointment, the services of the contractual Drivers can be dispensed with any time without assigning any reason or without giving any notice. She further deposed that the award dated 27.02.2013 passed by this Court is not applicable in the present case as at the time of termination of the contract of the workman, no vacant post was available with the management.

10. Learned Law Officer for the management has argued that the workman has been appointed on the contract basis and he was not terminated rather his services were dispensed with, on appointment of Bus Drivers on regular basis, as per terms & conditions of the appointment letter. Hence, the workman is not entitled for any retrenchment compensation and he prayed for deciding this issue against the workman and in favour of the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was appointed by the management purely on contract basis *vide* order No.196/ECD/CTU/HOD/2004, dated 28.06.2004. It is also not disputed the terms of the workman was extended from time to time. The main grudge of the workman is that he has been terminated without any notice and he has not been given any retrenchment compensation and he is totally relying upon the award dated 27.02.2013 published *vide* notification No.13/1/8640-HII(2)-2013/9958, dated 29.05.2013 passed the then Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh.

12. The workman has duly proved on record Exhibit 'AW1' which is bio-data of the workman, Exhibit 'AW2' medical examination of the workman, Exhibit 'AW3' order of appointment dated 28.06.2004 i.e. through which the workman was engaged as Bus Driver on contractual basis for a period of 89 days or till the regular appointment of the candidate belong to the SC / OBC as Bus Driver whichever is earlier, Exhibit 'AW4' letter with regard to information regarding traffic education to CTU Bus Driver, Exhibit 'AW5' copy of 'Punjab Tribune' newspaper edition through which the advertisement regarding appointment of 45 Drivers on contract basis was advertised, Exhibit 'AW6' copy of identity chit of the workman, Exhibit 'AW7' copy Chandigarh Administration Gazette dated 29.05.2013.

13. The workman himself is stating that he has been dispensed / terminated from service on 27.04.2006 whereas he has joined on 07.04.2006 as per order No.4394/ECD/HOD/CTU/2006, dated 07.04.2006 and he has relied upon identity card which has been extended on 07.07.2008. Firstly, the workman failed to prove and produce on record in order No. 4394/ECD/HOD/CTU/2006, dated 07.04.2006 through which the service / contract of the workman was extended for further 89 days and no identity card has been proved on record through which it can be ascertain that the contract of the workman has been extended upto 07.07.2008. The workman has only proved on record Exhibit 'AW3' i.e. order No.196/ECD/CTU/HOD/2004, 28.06.2004 in which he has been appointed on purely on contractual basis for 89 days thereafter one order dated 01.04.2005 through which the contract of the workman was extended for a period of 89 days i.e. 02.04.2005 to 29.06.2005. Hence, no order with regard to extension from 07.04.2006 placed on record.

14. Arguments addressed by the workman that it is admitted by the management witness that the contract of the workman was extended from time to time. I have gone through the cross-examination of MW1. MW1 during her cross-examination admitted that initially the contractual appointment was for 89 days and it was extended from time to time after gap of two three days. Hence, MW1 simply admitted with regard to extension of 89 days but has not directly admitted contractual extension for the period from 07.04.2006. Document with regard to extension of contractual period from 07.04.2006 has not been proved on file that document is very much material to pursue from which date the workman further joined the services.

15. Further it is stand of the workman that on 27.04.2006 he performed the duties and in the evening his services have been terminated by stating that regular appointment of SC / OBC category has been made. The workman himself while stepping into the witness box as AW1 admitted this fact in his cross-examination that the department has terminated his services along with other Driver in the year 2007 on joining of regular incumbents. Meaning thereby the services of the Driver has been terminated on joining of regular appointment. Further this fact is very well made clear in the order dated 28.06.2004 Exhibit 'AW3' that **the services of the workman shall automatically stand discontinued after expiry of contract period, without assigning any notice and no compensation of any type will be admissible to them on account of discontinuation of his contractual services.** Similarly, in order dated 01.04.2005 it is also mentioned that the terms & conditions of appointment will remain the same as laid down in the appointment letter bearing No.196/ECD/HOD/CTU/2004, dated 28.06.2004. So it is crystal clear from the aforesaid discussion that the workman has failed to prove any documentary proof with regard to extension of his service whereas as per order of Exhibit 'AW3' the management has terminated the services of the workman as per appointment as regular appointment already been joined on the same day on which date the workman alleged to terminated from the services. Hence, the workman is not entitled for retrenchment compensation. Arguments of the workman that his case is totally covered under the award dated 27.02.2013 does not inspire confidence as in that case the contractual Drivers were ordered to be reinstated as regular vacancies were lying **at that time** but in the present case in hand there is nothing on the file that **regular vacancies were existed at the time of termination of the workman** rather it is admitted by the workman himself regular appointment have been made on the same day when his termination has been made. Hence, termination is not illegal.

Issue No.2 :

16. Onus to prove this issue was on the management. Learned representative for the management has argued that the present claim of the workman is not maintainable being highly belated. Impugned order was passed in the year 2006 whereas the present claim challenging the same was filed after 10 years of cause of action. On the other hand, there is no bar of limitation to challenge termination under the ID Act.

17. I have considered the submission of learned Law Officer for the management and learned representative for the workman. Admittedly, the services of the workman were terminated in the year 2006 and the demand notice, on the basis of which the present industrial dispute has been raised and statement of claim filed, was filed 16.08.2015. Although there is no time limit to make reference under Section 10 of the ID Act but **there must be reasonable justification under for the delay.** In this regard reliance is made on citation titled as **Nedungadi Bank Limited Versus K. P. Madhavan Kutty, 2000(3) Vol.75 All India Services Law Journal 22 (SC)** wherein the Hon'ble Supreme Court of India as held as under :—

"5. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial was ex facie bad and incompetent."

Further, similar views have been observed in citation **Prithvi Singh Versus Executive Engineer, HPSEB Limited, Division Rajgarh, District Sirmaur, H.P. & Others, CWP No.4847 of 2015 decided on 26.08.2019 by Hon'ble Himachal Pradesh High Court.** In the present case in hand, no reasonable justification has been putforth by the workman for challenging his termination after more than nine years. In the light of law laid down and discussion made above, the present claim of the workman is barred by delay and latches. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

18. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 20th September, 2021.

(Sd.) . . . ,
(ANSHUL BERRY),
Presiding Officer,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

Secretary Labour,
Chandigarh Administration.

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